

LUD 5664 US (10017134)

REMARKS

Claims 13-21 will be pending. These replace claims number 1-12, presented previously, none of which were allowed.

The examiner had rejected claims 1-7 previously, arguing that these claims were not enabled under 35 U.S.C. §112, first paragraph. Applicants traverse.

First, it appears that the rejection ought to have been directed to claims 1-6, NOT to claims 1-7, because claim 7 deals with production of acute proteins, and not expression of STAT factors. Correction is required.

The examiner admits that she has employed non-prior art references to maintain her rejection, and argues that precedent of the Federal Circuit precursor court, i.e., the CCPA, is not relevant, because the facts are different from what is before the examiner now.

Were this the case, however, i.e., that precedent is irrelevant because facts differ, then the examiner could not rely on the cases relied upon which allegedly support her position. The facts are different in these cases as well.

In any event, the examiner admits, quite openly, that both species IL-TIF/IL-22 used did not stimulate production of STAT 3. New claim 13 now requires this. Hence, the examiner's argument is no longer relevant.

It is, of course noted that the examiner has stressed that there is insufficient enablement for any IL-TIF/IL-22, any STAT transcription factor, and any cell type; however, there are no arguments advanced other than the alleged failure of different species to stimulate all STAT factors. As the claims now require stimulation of that which the examiner admits is enabled generally, there should be no issue. Page 22 of the specification clearly states that the molecules function for different species, and there is nothing to disprove this.


With respect to the rejection of claims 8-12 which it is believed should be applied to claims 7-12, these claims are now enabled to the stimulation of STAT 3 as per claim 13. Hence, the enablement rejection is not proper, and is urged.

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In view of the foregoing, withdrawal of all rejections and allowance of claims 13-21 is believed proper and urged.

Respectfully submitted,

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